May 22, 2020

Sent via email

To: Objection Reviewing Officer
Intermountain Region, U.S. Forest Service
324 25th Street
Ogden, UT 84401
objections-intermtn-regional-office@usda.gov

Re: OBJECTION to the Newcrest Jarbidge Exploration Project Environmental Assessment (EA) and Draft Decision Notice and Finding of No Significant Impact (DN/FONSI)
Responsible Official: Joshua Nicholes; Mountain City, Ruby Mountains, and Jarbidge District Ranger

I. INTRODUCTION

Pursuant to 36 CFR Part 218, **Idaho Conservation League (ICL), Idaho Rivers United (IRU) and Idaho Chapter Sierra Club** (herein referred to as Objectors) file this Objection to the Environmental Assessment dated April 2020 (EA), and Draft Decision Notice and Finding of No Significant Impact dated April 2020 (Draft DN/FONSI), issued by Mountain City, Ruby Mountains, and Jarbidge District Ranger for the Newcrest Jarbidge Exploration Project in the Humboldt-Toiyabe National Forest in Elko County, Nevada, proposed by Newcrest Resources, Inc. The EA and Draft DN/FONSI are available at the FS webpage for the Newcrest Jarbidge Exploration Project: https://www.fs.usda.gov/project/?project=57159.

Pursuant to Part 218, ICL, IRU, and Idaho Chapter Sierra Club are the objectors. Primary contact person: Josh Johnson, ICL Conservation Associate, PO Box 2671, Ketchum, ID 83340,

208.726.7485; jjohnson@idahoconservation.org. Street Address: 110 W 5th St., Ste. 200, Ketchum, ID 83340.

The Objectors have fully participated in the Forest Service review of the Newcrest Jarbidge Exploration Project, and have tracked this project since 2018 when drilling activities were conducted by Quantum Exploration. An ICL staffer spoke with USFWS representatives on October 15, 2018, regarding illegal, unprotected stream crossings in bull trout habitat and approval for water withdrawals from area streams. On October 25, 2018, the same ICL staffer consulted with USFS personnel regarding the illegal crossings and the approval by the Idaho Department of Water Resources for water withdrawals from local waterways not analyzed in the NEPA decision. According to the USFS, Quantum put the exploration project on hold due to sage-grouse issues and associated GRSG amendments. Quantum Exploration consisted of claims leased by an individual who was working with Quantum. When Quantum withdrew, the claims lessee approached Newcrest, who then acquired the claims in question. Newcrest did not seek a new Plan of Operation (PoO), but proceeded with the existing permitted plan. It was during this period that Newcrest violated INFISH and RHCA stipulations and illegally crossed an unprotected stream in bull trout habitat. On December 20, 2019, ICL submitted scoping comments pertaining to the Newcrest/Jarbidge Exploration Project, which included a new 12-year Plan of Operations. These comments were co-signed by four additional concerned parties: The Wilderness Society, Idaho Rivers United, American Rivers, and The Sierra Club.

Pursuant to 36 CFR 218.8, the Objectors states that the following content of this Objection demonstrates the connections between the Objectors' comments for all issues raised herein unless the issue or statement in the EA or Draft DN/FONSI arose or was made after the opportunity for comments, as detailed herein. Pursuant to 36 CFR 218.8(b), Objectors' previous comments dated December 20, 2019, are hereby incorporated by reference.

II. OBJECTION ISSUES

This section raises specific objection points to issues that the Objectors first raised in the scoping process and that were not satisfactorily addressed in the EA, DN/FONSI, or in the Forest Service's responses to the Objectors' comments:

A. The EA and Draft DN/FONSI Violate NEPA

Due to the large scope and long duration of the Plan of Operations, and the many unknowns as the plan unfolds over 12 years, the project cannot be approved by FONSI and based on the EA, as proposed by the Forest Service. Without specifically identifying where 88% of the project's

surface disturbance will occur, and by stating that the effects will be spread across the entire 24,000-acre project area, the Forest Service is improperly masking the project's potentially significant impacts. The Forest Service should either (a) expand the analysis into a complete Environmental Impact Statement to properly consider the scale and scope of the 12-year project, the many uncertainties surrounding how it will unfold and what the impacts will be from the proposed work, or (b) reduce the project scope to include only those actions proposed for the first phase of exploration (and then fully analyze and avoid, minimize and mitigate against the impacts of the first phase). This first phase should be limited to a 3-year time span at which point the project can be reassessed. Without doing so, the Forest Service will violate NEPA.

a) NEPA background

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370(h), is America's basic "charter for protection of the environment." 40 C.F.R. § 1500.1(a). The Council on Environmental Quality ("CEQ") promulgates regulations implementing NEPA, which are binding on all federal agencies. 40 C.F.R. §§ 1500–1518.4.

NEPA requires federal agencies to ensure fully informed decision-making and provide for public participation in environmental analysis and decision-making. 40 C.F.R. § 1500.1(b)–(c). NEPA serves two principal purposes: (1) it ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts, and (2) it guarantees that the relevant information will be made available to the public so it may play a role in the decision-making process. This "hard look" at an action's impacts fosters both informed decision-making and informed public participation.

NEPA requires federal agencies to prepare an Environmental Impact Statement (EIS) for all "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). "Environmental information [must be made] available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b) (emphasis added). Among other things, an EIS must consider a reasonable range of alternative actions and assess site specific and cumulative impacts. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. §§ 1502.14,1502.16, 1508.25.

CEQ regulations list factors to consider when evaluating whether an EIS is required, which include: "[t]he degree to which the proposed action affects public health or safety"; "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas"; "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial"; "[t]he degree to which the possible effects on the human environment are

uncertain or involve unique or unknown risks"; "[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration"; "[w]hether the action is related to other actions with individually significant impacts"; and "[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment." 40 C.F.R. § 1508.27(b).

b) Relevant case law

An agency must prepare an EIS when there are substantial questions about whether a project "may" significantly degrade the environment. *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005) (emphasis in original). "[T]his is a low standard." *California Wilderness Coal. v. U.S. Dep't of Energy*, 631 F.3d 1072, 1097 (9th Cir. 2011) (quoting *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006)) (emphasis added). The CEQ's implementing regulations for NEPA set forth ten intensity factors for considering whether environmental impacts may be significant. 40 C.F.R. § 1508.27(b). The presence of any one of these factors may require an EIS. *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2005).

In *Bark v. U.S. Forest Service*, No. 19-35665 (9th Cir. May 4, 2020), the Ninth Circuit Court of Appeals held that the Forest Service decision to prepare an EA instead of an EIS for the 11,742-acre Crystal Clear Restoration project was arbitrary and capricious for two reasons. First, the Court found the effects of the project were highly controversial and uncertain, thus requiring an EIS. Essentially, the Forest Service's EA failed to engage with considerable contrary scientific and expert opinion presented during the scoping process, and the agency drew general conclusions that there would be no significant impacts. Second, the Forest Service failed to identify and meaningfully analyze the cumulative impacts of the project.

We note that case law cited in *Bark v. USFS* indicates the term "significant" includes considerations of both the context and intensity of the possible effects. Further, "A project is 'highly controversial' if there is a 'substantial dispute [about] the size, nature, or effect of the major Federal action rather than the existence of opposition to a use," (*Native Ecosystems Council*, 428 f.3d at 1240 (alteration in original) (quoting *Blackwood*, 161 F.3d at 1212).

c) Option 1 - Need to prepare a full EIS

The EA and Project Record disclose that the Project may have a significant impact on the environment, requiring the preparation of a full EIS. As currently laid out, the Newcrest/Jarbidge exploration project's extensive roadwork (up to 30 miles of newly constructed roads) and drill pad construction (22 identified sites), five identified staging areas, significant direct site

disturbance (up to 200 acres), and associated disturbance from noise, lights and other human activities are likely to have extensive and significant impacts on soils, vegetation, wildlife habitat, wildlife use of the area, recreationists, and visual resources, among others. When the proposed activities are considered in addition to previous mining disturbances in the area, the impacts are even more likely to be significant.

The Forest Service improperly downplayed and minimized these significance of these impacts. In the Draft DN/FONSI, the Forest Service says no EIS is needed because this action will not have a significant impact on the quality of the human environment. However, many project impacts remain uncertain given the long duration of the proposed project and are insufficiently defined in the Forest Service's EA, as described throughout these Objections.

The relevance of four intensity factors in particular from the CEQ's implementing regulations to this project demonstrate that an EIS is required:

(1) *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. 40 C.F.R. § 1508.27(6).* The DN/FONSI states that choosing the Proposed Action does not involve any highly uncertain effects or involve unique or unknown risks. We disagree. By authorizing a plan of operations that spans more than a decade, the Forest Service is inherently choosing a Proposed Action that involves significant unknown risks.

In the DN/FONSI, the Forest Service states, "because the locations of exploration activities for subsequent phases are unknown at this time, the entire 24,000-acre Project Area was used as the basis for analysis to determine impacts of the 12-year Project." Simply using the entire project area for analysis does not mitigate the uncertainty involved when it is very clear that the project will involve a significant amount of disturbance over a 12-year period and likely adversely affect bull trout and bull trout critical habitat.

The actual impact the project may have is highly dependent on where project roads and drill pads are located. While the location of proposed roads and drill pads for Phase 1 are disclosed, there is no specific information about future phases. This is concerning because Phase 1 includes only about 6 miles of the proposed 30 miles of roads, 22 of the proposed 1,000 drill sites, and 24 acres of the estimated 200 acres of surface disturbance. Phase 1 represents only about 20% of total roads, 2% of total drill sites, and 12% of total estimated surface disturbance allowable under this PoO. By hiding the ball when it comes to identifying where 88% of the project's surface disturbance will occur, and by stating that the effects will be dispersed across the entire 24,000-acre project area, the Forest Service is improperly masking the project's potentially significant impacts. Without knowing where

88% of surface disturbance will occur, the project's impacts are by definition highly unknown and uncertain.

Similarly, the Forest Service does not have adequate baseline data for all areas where project activities would occur, including groundwater hydrology and related surface water quantity and quality data. The U.S. District Court recently vacated the Decision Notice for the Kilgore Gold Exploration Project on the Caribou-Targhee National Forest because the Forest Service had not conducted baseline groundwater sampling on 15% of the project area. The Court ruled that the Forest Service could not permit exploration activities on *any* portion of the project area without knowing the significance of potential impacts in this small area that had been insufficiently analyzed. The same case applies here, and shows why the potential impacts of this project are highly uncertain and involve unknown risks.

Furthermore, baseline environmental conditions are likely to change over the long, 12-year project period, not just because of the project's impacts, but also because of climate change, wildfire, sage-grouse management and other factors. Thus, the agency cannot adequately consider the project's effects over an extended 12 year period as proposed in the PoO. Because of these changes to baseline conditions are themselves highly unknown and uncertain, so to are the project's effects during later phases. Accordingly, we find this intensity factor to be clearly triggered by the proposed project.

(2) *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. 40 C.F.R. § 1508.27(b)(3).* In the DN/FONSI, the Responsible Official dismissed this intensity factor by citing that there are no potential or eligible wild and scenic river segments in the project area. However, the Jarbidge River is designated as a wild and scenic river approximately 10 miles downstream from the project site. As a result of that designation, the federal government cannot permit any project or activity either inside or outside of the mapped Wild and Scenic corridor if it would degrade the Jarbidge River's free-flowing character, water quality or outstandingly remarkable values, which include scenery, recreation, geology, fish, wildlife, and cultural/historic values. If not sufficiently analyzed and properly managed, exploration activities have the potential to affect water quality and quantity in the wild and scenic corridor. Similarly, this project has the potential to adversely affect the nearby Jarbidge Wilderness. While project activities will not occur within the wilderness, both new and drill pads can be as close as 3,000 feet from the wilderness, which will have noise and air quality impacts.

(3) *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of*

1973. 40 C.F.R. § 1508.27(b)(9). The bull trout that reside in the Jarbidge watershed represent the southern-most population of this species in the Lower 48. In the DN/FONSI (citing the Biological Assessment), the Forest Service admits that the Proposed Action "may affect and is likely to adversely affect" bull trout (listed as *threatened* under the ESA) and bull trout critical habitat. As shown in Figure 5 of the Geohydrology specialist report, nearly all creeks and streams in the project area are listed as critical habitat for bull trout. In fact, during Phase 1, much of the road construction and drilling will occur along the edge of designated bull trout critical habitat along Jack Creek. Thus, we find this intensity factor to be triggered by the proposed project.

(4) The degree to which the action may establish precedent for future actions with significant effects or represents a decision in principal about a future consideration. 40 C.F.R 1508.27(b)(6). Here, by using the phased approach--where after Phase 1, Newcrest will come back to the Forest Service with specific proposals for each successive phase--the Forest Service triggers this NEPA significance factor too. This action approves Phase 1 and is a decision in principle about approving subsequent phases.

In summary, the Objectors find that at least four of the CEQ intensity factors to be triggered by the proposed project, clearly meeting the significance threshold that would require the agency to prepare an EIS. Through an EIS, the Forest Service can better involve the public, develop a wider range of alternatives, gather more complete baseline information, better analyze the Newcrest Jarbidge Exploration Project's environmental impacts, and better avoid, minimize and mitigate significant adverse impacts. To remedy this NEPA violation, the Regional Forester must remand the EA and Draft DN/FONSI back to the Humboldt-Toiyabe National Forest with instructions to correct all errors noted herein, and prepare an EIS for distribution and public comment before the USFS can consider approving any operations at the site.

d) Option 2 - Stay with EA, but significantly reduce project scope and address bull trout and groundwater monitoring concerns

An EA could be more appropriate for this project IF the project scope was significantly reduced to include only those actions proposed for Phase 1 of exploration, as delineated in Section 2.1.3.1 of the EA. Phase 1 activities are much better defined than subsequent phases of the proposal, so the expected environmental impacts can be properly assessed and managed with less uncertainty. After Phase 1, Newcrest could then develop a plan and seek approval for further exploration work from the Forest Service. As discussed previously in this objection, the scope of the 12-year Plan of Operations, and many unknowns about the project after Phase 1, exceeds what should be reasonably permitted under just an EA. Under this proposed option, the agency would still have

to amend the EA to address the bull trout and baseline groundwater monitoring concerns delineated in the subsequent sections of this Objection.

B. Insufficient analysis of impacts to bull trout

The bull trout that reside in the Jarbidge watershed represent the southern-most population of this species in the Lower 48, and are isolated from other bull trout populations by major dams and other in-stream structures. Nearly all creeks and streams in the project area are listed as critical habitat for bull trout. The Forest Service's proposed approval fails to comply with NEPA and the ESA by ignoring the project's true effects and failing to adequately protect bull trout.

NEPA Violations

NEPA obligates the agency to make available to the public high-quality information including accurate scientific analyses, expert agency comments, and public comments before decisions are made and actions are taken. 40 C.F.R. § 1500.1(b). CEQ's NEPA regulations provide that information used to inform NEPA analysis "must be of high quality" and that "[a]accurate scientific analysis…[is] essential to implementing NEPA." *Id.* The agency's discussion and analysis must be based on professional and scientific integrity. *Id.* § 1502.24. To take the required "hard look" at a proposed project's effects, an agency may not rely on incorrect assumptions or data.

Jarbidge bull trout are part of the Upper Snake Recovery Unit. In the EA, the Forest Service misleadingly emphasizes that the U.S. Fish and Wildlife Service (USFWS) has rated this Recovery Unit as "the most robust and least vulnerable recovery unit." EA, p. 25. But the Forest Service fails to point out that within the Upper Snake, it is the populations within the Salmon River watershed that are robust and stable whereas disconnected, lower-elevation populations like those in the Jarbidge are vulnerable. In the *Upper Snake Recovery Unit Implementation Plan for Bull Trout* (Sep. 2015), USFWS explains that climate models show Jarbidge bull trout "will have greatly reduced amounts of suitable habitat." Implementation Plan, p. E-13. Further, the "Jarbidge, Middle Fork Payette, and Squaw Creek core areas appear to change the most (baseline to 2040) and potentially will contain the least amount of persistent cold water habitat to support bull trout in the future." *Id.*

Thus, the EA gets it wrong and inaccurately paints a rosy picture for Jarbidge bull trout as a thriving, resilient and robust population. In reality, their future in the Jarbidge is far more precarious; this population is actually extremely sensitive to disturbance and at far greater risk of extirpation than other populations. The fact that this population has persisted to this date makes them even more important as populations of species that persist on the periphery of their range

may possess important genetic characteristics that may be vital to the species' continuing evolution and adaptation to changing environmental conditions. Unlike other bull trout populations in the Snake River system, the isolated nature of this population means that, should this population become extirpated, recolonization of this stream by an adjacent population is not possible. As such, the Forest Service should take an extremely cautious approach to activities that have a known track record for adverse impacts to water quality and fish habitat.

The FONSI and EA, which propose approving a plan of operations lasting into 2032 or so, fails to acknowledge these modeled changes increase the sensitivity to bull trout to additional anthropogenic disturbance during that time frame. The Forest Service also failed to take a hard look at impacts to bull trout, because under the phased approach, the location of most of the project's surface disturbance is entirely unknown. The Biological Assessment for this project concludes that the 12-year Newcrest Exploration Project "may affect and is likely to adversely affect bull trout" and "may affect and is likely to adversely affect bull trout critical habitat" (p. 77, 80). Without site-specific information about the vast majority of Newcrest's activities, the Forest Service failed to take a hard look at these likely adverse effects. And while the BA lists project-specific design features intended to reduce the effects to bull trout and their critical habitat, such unknown and unproven measures are no excuse for taking a hard look as required by NEPA.

Importantly, the EA notes that "[O]f greatest concern would be if ground water resources were negatively affected within the project area resulting in altered or reduced surface flows in the Jarbidge watershed" (p. 31). The EA goes on to say that "[D]ue to groundwater monitoring in the area, it is extremely unlikely that surface flows to the Jarbidge watershed and bull trout habitat will be reduced as a result of exploration drilling" (p. 31). However, as we will describe in a subsequent section of this Objection, we do not find the groundwater monitoring program to be sufficient to detect whether drilling activities are negatively affecting groundwater resources. Given the importance of groundwater as a Primary Constituent Element for bull trout critical habitat (BA, p. 46), the lack of sufficient groundwater monitoring is yet another example of the Forest Service's insufficient analysis with respect to impacts to bull trout.

ESA Violations

For the same reasons identified above, the Forest Service's BA is inadequate and violates the duty to consult and ensure against jeopardy and adverse modification of critical habitat under ESA Section 7 and will allow for unauthorized take prohibited under ESA Section 9. Depending on where Newcrest locates its roads and drill pads, the project will have large effects on bull trout and their habitat. This is particularly important given USFWS's determination that bull

trout and habitat in the Jarbidge faces serious problems due to climate change--something the Forest Service ignored in its BA.

C. Insufficient groundwater quality baseline and ongoing monitoring

The project's existing groundwater baseline monitoring and proposed groundwater monitoring program, as summarized in the Geohydrology Report, are both insufficient and in violation of NEPA. The existing baseline water quality data includes 23 surface water sites, three spring sources, and three mine water surface features. To take the required "hard look" at a proposed project's effects, an agency may not rely on incomplete or incorrect assumptions or data. The blatantly unrealistic assumption that samples from three mine water sources could accurately characterize groundwater quality across a 24,000-acre project area is in clear violation of that NEPA requirement. Given that the drilling locations beyond Phase 1 of the exploration plan are not specified, the Forest Service needs to require comprehensive groundwater sampling across all 24,000 acres of the project area that accounts for seasonal variability prior to the commencement of drilling to ensure that a proper baseline is established.

Since Newcrest plans to continue the quarterly surface and groundwater monitoring program over the course of the 12-year project, the same issues we noted for the baseline groundwater data similarly apply to the ongoing groundwater monitoring program. With solely the ongoing program of groundwater data collection, drilling in most parts of the project area could cause groundwater contamination that would go entirely unnoticed until it already impacts surface waters due to the paucity of monitoring sites.

Even if the Forest Service was just permitting Phase 1 of this exploration project right now, the existing groundwater monitoring would still be severely deficient. According to the maps in the Geohydrology Report, the three mine water features (shafts and adits) that are monitored currently to characterize groundwater quality are all located on the east side of the Jarbidge River. However, a large cluster of proposed borehole locations for the 2020 drilling season are located in the southwest corner of the project area - on the west side of the Jarbidge River and in a completely different subdrainage. Thus, we find it highly unlikely that those three monitored mine water features could at all reflect or capture baseline groundwater conditions in the area that will actually be drilled in the Deer Creek headwaters.

Federal courts have repeatedly held that insufficient baseline groundwater studies for mineral exploration violate NEPA. *See Idaho Conservation League v. U.S. Forest Service*, No. 1:11-cv-00341-EJL, 2012 WL 3758161, *16–*17 (D. Idaho Aug. 29, 2012) (Forest Service violated NEPA by failing to gather baseline groundwater hydrology data necessary to understand potential impacts of drilling and improperly relied on post-approval monitoring in approving

5-year CuMo exploration project); *Gifford Pinchot Task Force v. Perez*, No. 03:13-cv-00810-HZ, 2014 WL 3019165, *25, *31 (D. Or. July 3, 2014). (Forest Service violated NEPA by failing to gather baseline groundwater data and by relying on monitoring during the project that only includes a portion of the exploration project site in approving Goat Mountain exploration); *Idaho Conservation League v. U.S. Forest Service*, No. 1:18-cv-504-BLW, 2019 WL 6896908 (D. Idaho Dec. 18, 2019), *4 (same when the Forest Service approved the 5-year Kilgore exploration project).

Just this month, a federal court in Idaho vacated the Decision Notice and EA for the Kilgore exploration project on the Caribou-Targhee National Forest because--even though the Forest Service conducted thorough baseline groundwater studies and setup ongoing groundwater and surface water monitoring for 85% of the project site--the Forest Service failed to do the same for the other 15% of the project area. *Idaho Conservation League v. U.S. Forest Service*, No. 1:18-cv-504-BLW, 2020 WL 2115436 (D. Idaho May 4, 2020). The Court held that the Forest Service failed to take a hard look at potential impacts to groundwater from drilling in violation of NEPA, and ruled that the Forest Service could not permit any exploration activities until this error was corrected on the 15% of the site. *Id.*

The Forest Service/Newcrest have committed the same flaw here, but much more egregiously, because the baseline groundwater data and ongoing sampling in the project area barely scratches the surface.

The Forest Service/Newcrest needs to conduct baseline groundwater monitoring across the entire 24,000-acre project area before the new phase of exploration can commence. Not only should every identified spring in the project area be sampled quarterly, but Newcrest should also be required to drill groundwater monitoring wells in a sufficient density and range of locations to capture the seasonal variability and potential impacts from any drilling activity within the project area. To fail to do so puts this project in clear legal jeopardy going forward given how federal courts have ruled on analogous cases involving the Cumo, Goat Mountain, and Kilgore exploration projects.

The monitoring program should use as a minimum the same standards initially deemed adequate for the Kilgore Project (from 2014 Kilgore Gold Decision Notice and EA):

> ***Description***
> *Pre-approval monitoring is occurring to establish baseline data for wildlife, surface water, and groundwater quality. Monitoring would continue throughout exploration road construction and drill operations to document the presence of endangered, threatened or sensitive wildlife and plants within the project area. Surface and groundwater quality*

would be measured during and after road construction and exploration drilling to determine the effects of operations on surface and groundwater.

Monitoring when and by whom
Groundwater discharges would be monitored for inorganic contaminants (including Selenium and Zinc) by Otis monthly during drilling. Water discharged from exploration drill holes to sumps would be visually monitored to prevent discharges to the ground surface by a drilling crew member when water levels are within 1-foot of overflowing. Overflow event monitoring would be done by Otis' drilling crew continually as drilling progresses at each site.

Otis will continue monitoring during and after the 2015 field season for one-year unless changes to surface or groundwater indicate the need for continuation. When water quality data indicates an increased concentration of hazardous substances in the sample analysis over 3 consecutive months, the Forest will require Otis to investigate possible causes for the negative change in water quality.

Otis will investigate increases in water quality parameters and provide the forest a written report within 6 months. The report will recommend mitigation if water quality contaminant increases are directly the result of Otis exploration operations.

If water quality analysis indicates water quality has degraded below State of Idaho and Clean Water Act criteria for the protection of surface water, and State of Idaho water quality criteria to protect groundwater, operations will cease until mitigation can be implemented to protect surface and groundwater. The Idaho Department of Environmental Quality will be notified and informed of the situation. FS inspector will review testing results monthly while drilling is in progress for regulatory compliance with
State and Federal clean water regulations.

As another suggested remedy, the Forest Service should post implementation updates on completed, ongoing, and anticipated work on the Forest Service project website. Documents should include Forest Service inspection and compliance and progress reports for drilling operations and reclamation efforts. The Forest Service should include additional measures to better involve the public in implementation and effectiveness monitoring.

III. CONCLUSION

In conclusion, as detailed above and in the previous comments submitted by the Objectors, the EA and Draft DN/FONSI fail to fully comply with numerous federal laws, regulations, policies, and other requirements. As such, the Forest Supervisor's Office must remand both documents and correct all errors noted herein. The Forest Service cannot approve any of the action alternatives described in the EA and Draft DN/FONSI, or any other alternative, unless and until all laws, regulations, policies, and other requirements noted herein are satisfied.

Our suggested remedies are for the Forest Service to a) conduct an Environmental Impact Statement and/or b) significantly reduce the project scope to include only those actions proposed for Phase 1 of exploration. In either option, the Forest Service should develop additional alternatives other than simply the Proposed Action and the No Action Alternative to find a solution that better minimizes environmental impacts. Furthermore, the existing mitigation measures in place to protect bull trout are not sufficient given the uncertainty associated with future phases of operations. Lastly, the baseline groundwater data must be significantly bolstered or the project faces potential legal jeopardy moving forward.

We request a meeting with the Deciding Official and the Objection Reviewing Officer to discuss these concerns in detail.

Respectfully submitted,

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